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OFFICE OF PETITIONS

In re Application of :
Linkert et al. :
Application No. 10/772,478 :
Filed: 5 February, 2004 :
Attorney Docket No. 1578.197 :
(10879-US-PAT) :

DECISION ON PETITION TO
WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed on 21 May, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the non-final Office action mailed on 1 September, 2006, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on 20 March, 2007.

Petitioners assert that the non-final Office action mailed on 1 September, 2006, was never received. Specifically, petitioners aver that the Office action was not mailed to the correct address.

A review of the Official file reveals that the Office action was mailed to Customer No. 44028, PIERS JENDRIE, 5305 ANKARA COURT, AUSTIN TX 78730. It is further noted on 22 February, 2005, and 15 May, 2006, petitioner filed a Change of Correspondence Address requesting the Office use the address associated with Customer No. 44028 as the correspondence address. On 5 June, 2006, however, a Change of Correspondence Address requesting the address associated with Customer No. 44208 be used as the correspondence address was filed.

It is therefore concluded that petitioners initially filed two Change of Correspondence Address requests which did not reference the correct Customer Number. However, a Change of Correspondence Address request referencing the correct Customer Number was filed on 5 June, 2006, prior to the mailing of the Office action mailed on 1 September, 2006. As the showing of record is that the

Customer Number associated with the correct correspondence address was provided prior to the mailing of the Office action mailed on 1 September, 2006, and the Office action was not mailed to the requested address, the failure of petitioners to receive the Office action was due to an Office error; not petitioners' error.

The petitioners have made a sufficient showing of nonreceipt of the Office action. As such, the showing of record is that there was no abandonment in fact. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

As the petition was necessitated by an Office error, no petition fee is due.

As petitioner has submitted a reply to the non-final Office action mailed on 1 September, 2006, with the present petition, the Office action will not be remailed. Rather, the response will be considered timely filed.

The address in the petition is different than the correspondence address. A copy of this decision will be mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

The application is referred to Technology Center Art Unit 2164 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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